

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs September 10, 2009

**FLETCHER GORDON a.k.a. GORDON FLETCHER v. STATE OF  
TENNESSEE**

**Direct Appeal from the Criminal Court for Davidson County  
No. 2005-B-1364     Mark J. Fishburn, Judge**

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**No. M2009-00344-CCA-R3-HC - Filed February 19, 2010**

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The petitioner, Fletcher Gordon a.k.a. Gordon Fletcher,<sup>1</sup> filed in the Davidson County Criminal Court a petition for habeas corpus relief from his conviction for second degree murder, alleging that the trial court violated ex post facto protections in imposing a twenty-three-year sentence. The habeas corpus court dismissed the petition, finding that the petitioner's judgment was facially valid. On appeal, the petitioner challenges the habeas corpus court's ruling. Upon review, we affirm the judgment of the habeas corpus court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed.**

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which JERRY L. SMITH and J.C. MCLIN, JJ., joined.

Fletcher Gordon a.k.a. Gordon Fletcher, Only, Tennessee, Pro se.

Robert E. Cooper, Jr., Attorney General and Reporter; and Cameron L. Hyder, Assistant Attorney General, for the appellee, State of Tennessee.

**OPINION**

**I. Factual Background**

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<sup>1</sup> The petitioner's name in the style of his habeas corpus petition and his appellate brief is "Gordon Fletcher"; however, the petitioner's name on the indictment and his signature on the habeas corpus petition and his appellate brief is "Fletcher Gordon."

The record before us reveals that on June 10, 2005, the Davidson County Grand Jury returned a multi-count indictment charging the petitioner with first degree premeditated murder, felony murder, and especially aggravated robbery. The indictment alleged that all of the offenses were committed on December 20, 2004.

On August 21, 2006, the petitioner pled guilty to second degree murder as a lesser-included offense of first degree murder, in exchange for a standard Range I sentence of twenty-three years, one hundred percent of which was to be served in confinement. Additionally, the plea agreement provided that the remaining charges were to be dismissed.

Subsequently, on November 3, 2008, the petitioner filed a petition for a writ of habeas corpus, alleging that his sentence was imposed under the 2005 amendments to the 1989 Sentencing Reform Act. The petitioner contended that the trial court violated his constitutional rights by sentencing him under the 2005 amendments for an offense he committed in 2004, before the inception of the amendments. He said that he did not “properly waive his ex post facto rights”; therefore, his sentence is illegal and void.

Without appointing counsel or conducting an evidentiary hearing, the habeas corpus court dismissed the petition, finding that the judgment was facially valid. Additionally, the court noted that the petitioner’s sentence was imposed by agreement; therefore, there was no sentencing hearing and the petitioner’s ex post facto rights were not violated. On appeal, the petitioner contests this ruling.

## **II. Analysis**

Initially, we note that the determination of whether to grant habeas corpus relief is a question of law. Summers v. State, 212 S.W.3d 251, 255 (Tenn. 2007). As such, we will review the trial court’s findings de novo without a presumption of correctness. Id. Moreover, it is the petitioner’s burden to demonstrate, by a preponderance of the evidence, “that the sentence is void or that the confinement is illegal.” Wyatt v. State, 24 S.W.3d 319, 322 (Tenn. 2000).

Article I, section 15 of the Tennessee Constitution guarantees an accused the right to seek habeas corpus relief. See Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). However, “[s]uch relief is available only when it appears from the face of the judgment or the record of the proceedings that a trial court was without jurisdiction to sentence a defendant or that a defendant’s sentence of imprisonment or other restraint has expired.” Wyatt, 24 S.W.3d at 322; see also Tenn. Code Ann. § 29-21-101 (2000). In other words, habeas corpus relief may be sought only when the judgment is void, not merely voidable. Taylor, 995 S.W.2d at 83. “A void judgment ‘is one in which the judgment is facially invalid because the court

lacked jurisdiction or authority to render the judgment or because the defendant's sentence has expired.' We have recognized that a sentence imposed in direct contravention of a statute, for example, is void and illegal." Stephenson v. Carlton, 28 S.W.3d 910, 911 (Tenn. 2000) (quoting Taylor, 995 S.W.2d at 83).

Initially, we note that as the habeas corpus court found, the petitioner's sentence was the result of a plea agreement. Accordingly, there is nothing in the record to prove that the trial court impermissibly sentenced the petitioner under the 2005 amendments to the Sentencing Act. See Boyd W. Molloy v. Ricky Bell, Warden, No. M2007-01337-CCA-R3-HC, 2008 WL 544568, at \*2 (Tenn. Crim. App. at Nashville, Feb. 27, 2008). Further, under the Sentencing Act as it existed in 2004, a standard Range I offender convicted of second degree murder was subject to a sentence between fifteen and twenty-five years. See Tenn. Code Ann. §§ 39-13-210(b); 40-35-112(a)(1) (2003). The 2005 amendments to the Sentencing Act did not change this sentencing range. See Tenn. Code Ann. §§ 39-13-210(b); 40-35-112(a)(1) (2006); see also Michael V. Morris v. James Fortner, Warden, No. M2008-01022-CCA-R3-CD, 2009 WL 690304, at \*3 (Tenn. Crim. App. at Nashville, Feb. 26, 2009). The petitioner's twenty-three-year sentence falls within this range; therefore, as the habeas corpus court found, the petitioner's sentence is facially valid. See Edwards v. State, 269 S.W.3d 915, 924 (Tenn. 2008). Therefore, the petitioner is not entitled to habeas corpus relief.

### **III. Conclusion**

Finding no error, we affirm the judgment of the habeas corpus court.

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NORMA McGEE OGLE, JUDGE